

*VIVIAN BERT, ET AL. V. AK STEEL CORPORATION*

**NOTICE TO CLASS MEMBERS REGARDING THE SETTLEMENT OF THE CLASS ACTION AND NOTICE OF HEARING ON PROPOSED SETTLEMENT**

**This Notice is for your information only. You are not being sued, you are not required to appear in Court and you are not required to hire an attorney in this case.**

This Notice describes the background of a class action lawsuit filed by African American applicants who failed a pre-employment screening test against AK Steel, and a summary of the proposed settlement of that lawsuit. You have received this Notice because you may be one of the people whose rights will be affected by the lawsuit and the proposed settlement. If you wish to object to the proposed settlement, you must do so in the manner described below on or before \_\_\_\_\_, 2008.

This Notice is given to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an Order of the Court. The Notice tells you about the lawsuit, the proposed settlement, your right to object to the proposed settlement, your right to submit a proof of claim and your right to participate in the final hearing on the proposed settlement.

Nothing in this Notice shall be taken as an expression by the Court of any opinion as to the ultimate outcome of the lawsuit in the event the proposed settlement is not approved, and nothing in this Notice shall be taken to mean that there would necessarily be any recovery in the lawsuit in the event the proposed settlement is not approved.

**I. Background Description Of Class Action Lawsuit**

This lawsuit is captioned *Vivian Bert, et al. v. AK Steel Corporation*, Case Number C-1-02-467, and it is pending in the United States District Court for the Southern District of Ohio. The lawsuit was brought as a class action. The lawsuit currently alleges that the

pre-employment screening test that AK Steel used in Middletown, Ohio and Ashland, Kentucky had a disparate impact on African American applicants, meaning the Plaintiffs claim that African American applicants failed the test at a higher rate than other applicants. AK Steel denies that the pre-employment test unlawfully discriminated against African American applicants. The Court has not made any decision on the merits of the class claims made in the lawsuit. The sending of this Notice is not an indication of how the Court may or may not view the parties' claims or defenses. The settlement is being proposed in order to resolve by agreement claims that are disputed and undecided.

You have received this Notice because AK Steel's records indicate that you are a member of the class. If you are a member of the class, your rights may be affected by the settlement, if it is approved by the Court.

You are a class member and are covered by this settlement if you are African American and you applied for a labor reserve position at AK Steel's Middletown plant and took and failed AK Steel's pre-employment screening test prepared by Resource Associates, Inc. on or after September 12, 2001 or you applied for a labor reserve position at AK Steel's Ashland, Kentucky plant and took and failed AK Steel's pre-employment screening test on or after August 12, 2001.

After investigation, review, and analysis of the facts and law relating to the matters at issue in this lawsuit, and after fully briefing AK Steel's motions for summary judgment, the attorneys for the class have negotiated a proposed settlement with AK Steel on behalf of the class. The attorneys and class representatives have weighed the facts and evidence in this case, the risks inherent in this lawsuit, the likelihood of obtaining recovery if they were to proceed further in this litigation, the likelihood that, even if they were successful, any recovery would be greater than that obtained in this settlement, taking into account the additional time and expense

that obtaining a greater recovery would require, and have determined that this settlement is fair and reasonable and in the best interests of the class.

The District Court has granted preliminary approval of the proposed settlement agreement. The Court directed that this Notice be sent to class members and scheduled a hearing for \_\_\_\_\_, 2008, for the purpose of determining whether the proposed settlement agreement is fair, adequate and reasonable and whether it should receive final approval by the Court. That hearing is scheduled to take place at \_\_\_\_\_ before the Honorable Sandra Beckwith, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Courtroom \_\_\_\_, Cincinnati, Ohio 45202. **Class Members ARE NOT required to attend this hearing. However, Class Members who object to the proposed settlement are entitled to attend this hearing and speak in support of their objections. In order to speak at the hearing, any objector must have filed a timely written objection(s) in accordance with the procedures described in Section IV below.** If the settlement agreement is approved, all class members will be covered by the settlement, whether or not they have attended the hearing or filed objections. This settlement proposes both monetary and non-monetary relief for the class. Eligibility for monetary relief will be based on submission of a proof of claim as described in Section II, C below.

The Court has appointed the following attorneys as class counsel: Robert F. Childs, Jr., Herman N. Johnson, Jr., Susan Donahue, Wiggins, Childs, Quinn & Pantazis, P.C., The Kress Building, 301 19th Street North, Birmingham, Alabama 35203, (205) 314-0500, fax (205) 254-1500, David Sanford, Sanford, Wittels & Heisler, L.L.P., 1666 Connecticut Avenue, N.W. Suite 310, Washington, D.C. 20009, [dsanford@nydclaw.com](mailto:dsanford@nydclaw.com) and Grant Morris, 7 DuPont Circle, N.W., Suite 250, Washington, D.C. 20036, and Paul H. Tobias, Tobias, Kraus & Torchia, 911

Mercantile Library Building, 414 Walnut Street, Cincinnati, Ohio 45202, (513) 241-8137, fax (513) 241-7863.

A copy of the preliminary approval order, as well as other public documents filed in connection with the lawsuit can be inspected and copied in the office of the Clerk of the Court. Please see Section V of this Notice for further details.

## **II. Terms Of The Proposed Settlement Agreement**

The basic terms of the proposed settlement agreement are set forth below:

A. AK Steel will not use the 365-question, paper and pencil pre-employment screening test developed by Resource Associates, Inc. that was at issue in this litigation.

B. AK Steel will cause to be validated any pre-employment personality, intelligence or knowledge-based test used in its hiring and selection process for entry-level laborer positions at its Middletown Works or Ashland Works during the three-year period following the effective date of the settlement agreement. Such validation will be approved by Kathleen Lundquist or another qualified individual approved by the parties. AK Steel will bear the cost of such validation which is expected to exceed \$300,000.

C. AK Steel will make a Class Payment into a qualified settlement fund. The amount of the Class Payment will be calculated by multiplying \$3,400 by the number of Class Members who file a timely and proper Proof of Claim Form as discussed below. The monies in the qualified settlement fund will then be distributed to class members pursuant to a formula established by Class Counsel based in part on mitigation factors. Class members who wish to receive a portion of this class payment must complete and submit the Proof of Claim Form within 60 days of the mailing of the Proof of Claim Form. Because any payment made to a class member will be based in part on the class member's mitigation, or interim earnings, this Proof of

Claim Form must be accompanied by proof (either W-2s or tax returns) of the class member's income for the period of time since the class member failed the AK Steel test. If both W-2s and tax returns are unavailable, class members may submit a statement under oath identifying the individual's wages during the period for which W-2s and tax returns are unavailable. Absent extraordinary circumstances, proof of income shall be a copy of an individual's W-2s or tax returns, or the sworn statement referred to above in the absence of these documents. These documents will be kept confidential unless you request that they be filed with the Court. If filed with the court, the parties will ask the Court to have them filed under seal so that they may not be viewed by the public. The Proof of Claim Form will be sent to class members after final approval of the settlement. Class members who wish to receive this Form must inform the Notice Administrator at \_\_\_\_\_ of any change in address.

D. AK Steel will pay \$10,000 to Roderique Russell and to each of the class representatives Darlene Denise Carter, Darrell Carter, Marnie Carter, Kay Jackson, and Timothy Oliphant for their services as class representatives and the time and expenses they have spent during this six-year litigation.

E. If there is any appeal from the judgment, then AK Steel will not be obligated to make the payments or take the actions set forth above unless and until the judgment is affirmed and is not subject to any further appeal.

F. Under the terms of the settlement agreement, the claims in this class action lawsuit of both the class representatives and the class members will be dismissed with prejudice. If the settlement is approved, class members (including class representatives) will be subject to the judgment of the Court and will not be allowed to bring any further claim for relief against AK Steel or any of its affiliates or agents which relates in any way to the acts, facts or events

alleged or referred to in this litigation, including the claims related to AK Steel's pre-employment screening test and the class member's related application for employment at AK Steel. All claims which were brought in this litigation or could have been brought in this litigation will be released. Released claims include known and unknown claims. Released claims do not include future claims against AK Steel, including for an alleged failure to abide by the terms of this settlement agreement.

G. Pursuant to the terms of the settlement agreement, neither AK Steel nor any of its officers, directors or employees admit any liability or wrongdoing.

### **III. Attorneys Fees And Costs**

Under the terms of the settlement agreement, AK Steel has agreed to pay class counsel \$750,000.00 for work performed and costs incurred in the litigation and resolution of this dispute. This amount will be paid by AK Steel and does not reduce the amount of money payable to class members.

### **IV. Notice of Final Settlement Approval Hearing**

A hearing will be held before the Honorable Sandra Beckwith, United States District Court Judge, in courtroom \_\_ at the Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202 on \_\_\_\_\_, 2008 at \_\_\_\_\_ to: (a) determine whether the Settlement should be approved as fair, reasonable and adequate; (b) consider any objections to the settlement; and (c) enter judgment, if determined appropriate.

You have the right to object to the proposed settlement and to have your objections heard and considered by the Court. If you wish to object, you must do so by sending your objection(s) in writing to the Claims Administrator at the following address: \_\_\_\_\_. Objections must be postmarked on or before \_\_\_\_\_. Any objections that are not sent to the Claims

Administrator in writing on or before \_\_\_\_\_ at the address given above will not be considered by the Court. You do not need to attend the hearing in order to have your objection heard and considered by the Court, but if you or your attorney wish to be heard at the hearing, or if you want to have the Court consider your objection(s), you or your attorney must have submitted your objection to the Claims Administrator by the deadline set forth above. Class members who choose to object shall be responsible for any attorney fees or costs which they incur in connection with making such objections.

If after the hearing, the Court enters a final judgment approving the settlement, the judgment will be binding on all class members, including those who filed objections and those who did not, assuming there is no successful appeal from the judgment.

#### **V. Further Information**

This Notice provides merely a summary of this litigation and settlement. A copy of the complete Settlement Agreement is enclosed. The pleadings and other records in the lawsuit may be examined and copied at the expense of the requesting person at any time during regular office hours at the office of the Clerk of Courts, Room 103, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.

Further information regarding the lawsuit, proposed settlement or this notice may be obtained by contacting any of the following attorneys who have been designated as class counsel: Robert F. Childs, Jr. ([rfc@wcqp.com](mailto:rfc@wcqp.com)), Herman N. Johnson, Jr. ([rnj@wcqp.com](mailto:rnj@wcqp.com)), Susan Donahue ([sgd@wcqp.com](mailto:sgd@wcqp.com)), Wiggins, Childs, Quinn & Pantazis, P.C., The Kress Building, 301 19th Street North, Birmingham, Alabama 35203, (205) 314-0500, fax (205) 254-1500.

**Do not contact the District Court or any of its offices if you have questions concerning this Notice.**

This Notice is not an expression by the Court as to the reasonableness, fairness or adequacy of the settlement.

Dated \_\_\_\_\_, 2008

By order of the Court

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Sandra Beckwith  
U.S. District Court Judge